Elkins Family Law Task Force Final Report:

EXECUTIVE SUMMARY

ADMINISTRATIVE OFFICE OF THE COURTS

CENTER FOR FAMILIES, CHILDREN & THE COURTS

JUDICIAL COUNCIL OF CALIFORNIA

Hon. Ronald M. George
Chief Justice of California and Chair of the Judicial Council

Hon. George J. Abdallah, Jr.
Judge of the Superior Court of California, County of San Joaquin

Hon. Marvin R. Baxter
Associate Justice of the California Supreme Court

Hon. Tani Cantil-Sakauye
Associate Justice of the Court of Appeal, Third Appellate District, Sacramento

Mr. Anthony P. Capozzi
Attorney at Law, Fresno

Hon. Ellen M. Corbett
Member of the California State Senate

Hon. Lee Smalley Edmon
Assistant Presiding Judge of the Superior Court of California, County of Los Angeles

Hon. Mike Feuer
Member of the Assembly

Hon. Terry B. Friedman
Judge of the Superior Court of California, County of Los Angeles

Hon. Brad R. Hill
Associate Justice of the Court of Appeal, Fifth Appellate District

Hon. Richard D. Huffman
Associate Justice of the Court of Appeal, Fourth Appellate District, Division One

Ms. Miriam Aroni Krinsky
Attorney at Law

Mr. Joel S. Miliband
Attorney at Law, Rus, Miliband & Smith

Hon. Dennis E. Murray
Presiding Judge of the Superior Court of California, County of Tehama

Mr. James N. Penrod
Attorney at Law, Morgan, Lewis & Bockius

Hon. Winifred Younge Smith
Judge of the Superior Court of California, County of Alameda

Hon. Kenneth K. So
Judge of the Superior Court of California, County of San Diego

Hon. Sharon J. Waters
Judge of the Superior Court of California, County of Riverside

Hon. David S. Wesley
Judge of the Superior Court of California, County of Los Angeles

Hon. James Michael Welch
Judge of the Superior Court of California, County of San Bernardino

Hon. Erica R. Yew
Judge of the Superior Court of California, County of Santa Clara

ADVISORY MEMBERS

Hon. Lon F. Hurwitz
Commissioner of the Superior Court of California, County of Orange

Mr. Michael D. Planet
Executive Officer, Superior Court of California, County of Ventura

Mr. Frederick K. Ohlrich
Clerk of the Supreme Court of California

Hon. Mary Ann O'Malley
Presiding Judge, Superior Court of California, County of Contra Costa

Mr. Michael M. Roddy
Executive Officer, Superior Court of California, County of San Diego

Hon. Michael P. Vicencia
Judge of the Superior Court of California, County of Los Angeles

Ms. Kim Turner
Executive Officer, Superior Court of California, County of Marin

ADMINISTRATIVE OFFICE OF THE COURTS

Mr. William C. Vickrey
Administrative Director of the Courts and Secretary of the Judicial Council

Members of the Elkins Family Law Task Force 2008–2010

Hon. Laurie D. Zelon, Chair
Associate Justice of the Court of Appeal, Second Appellate District, Division Seven

Ms. Tülin D. Açikalin
Managing Attorney
Bay Area Legal Aid

Hon. Sue Alexander
Commissioner of the Superior Court of California, County of Alameda

Hon. Lorna A. Alksne
Judge of the Superior Court of California, County of San Diego

Hon. Irma Poole Asberry
Judge of the Superior Court of California, County of Riverside

Ms. Kathy Bañuelos
Counsel
California Senate Judiciary Committee

Mr. Richard Barry
Attorney at Law
San Rafael

Hon. Louise Bayles-Fightmaster
Commissioner of the Superior Court of California, County of Sonoma

Hon. Jerilyn L. Borack
Judge of the Superior Court of California, County of Sacramento

Ms. Linda D. Daeley
Family Law Manager
Superior Court of California, County of Orange

Ms. Julie C. Dodge
Self-Help Center Attorney
Family Law Facilitator
Superior Court of California, County of Stanislaus

Ms. Patricia Foster
Director, Family Court and Special Services
Superior Court of California, County of Tulare

Ms. Ana María García
Supervising Attorney
Neighborhood Legal Services of Los Angeles County

Hon. Michael J. Gassner
Commissioner of the Superior Court of California, County of San Bernardino

Hon. Barry P. Goode
Judge of the Superior Court of California, County of Contra Costa

Mr. José Octavio Guillén
Executive Officer of the Superior Court of California, County of Sonoma

Mr. Vahan Hovsepian
Director, Family and Children Services
Superior Court of California, County of Butte

Hon. Joan K. Irion
Associate Justice of the Court of Appeal, Fourth Appellate District, Division One

Hon. Irwin H. Joseph
Commissioner of the Superior Court of California, County of Santa Cruz

Hon. Mark A. Juhas
Judge of the Superior Court of California, County of Los Angeles

Mr. Lawrence E. Leone
Attorney at Law
Los Angeles

Mr. Drew Liebert
Chief Counsel
California Assembly Judiciary Committee

Ms. Margaret Little, Ph.D.
Senior Administrator
Family Law and Probate Superior Court of California, County of Los Angeles

Ms. Judy B. Louie
Director, ACCESS Center
Superior Court of California, County of San Francisco

Hon. Patricia M. Lucas
Judge of the Superior Court of California, County of Santa Clara

Mr. Mark E. Minyard
Attorney at Law
Newport Beach

Ms. Suzanne Clark Morlock
Family Law Attorney
County of Butte

Ms. Sandra Joan Morris
Attorney at Law
San Diego

Ms. Lorie S. Nachlis
Attorney at Law
San Francisco

Hon. Kimberly J. Nystrom-Geist
Judge of the Superior Court of California, County of Fresno

Ms. Rebecca L. Prater
Staff Attorney
Office of the Family Law Facilitator
Superior Court of California, County of San Diego

Hon. Vance W. Raye
Associate Justice of the Court of Appeal, Third Appellate District

Mr. Stephen B. Ruben
Attorney at Law
San Francisco

Ms. Caron Caines Smith
Family Law Case Coordinator Attorney
Superior Court of California, County of Ventura

Hon. Nancy Wieben Stock
Presiding Judge of the Superior Court of California, County of Orange

Mr. Hugh K. Swift
Executive Officer of the Superior Court of California, County of Amador

Hon. B. Scott Thomsen
Commissioner of the Superior Courts of California, Counties of Nevada and Sierra

Mr. Peter M. Walzer
Attorney at Law
Woodland Hills

STATE BAR LIAISON

Ms. Sharon Ngim
Program Developer and Staff Liaison
Standing Committee on the Delivery of Legal Services (SCDLS)
State Bar of California Office of Legal Services, Access and Fairness Programs

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

Hon. Ronald M. George
Chief Justice of California and
Chair of the Judicial Council

William C. Vickrey
Administrative Director of the Courts

Ronald G. Overholt
Chief Deputy Director

CENTER FOR FAMILIES, CHILDREN & THE COURTS

Diane Nunn
Director

Charlene Depner, Ph.D.
Assistant Director

Bonnie Rose Hough
Managing Attorney

Deborah Chase
Senior Attorney

Katie Howard
Supervisor

Rita Mah
Attorney

Lee Morhar
Special Consultant

Deana Piazza
Supervising Research Analyst

Patricia Rivera
Administrative Coordinator

Gabrielle Selden
Attorney

Julia Weber
Supervising Attorney

About the Elkins Family Law Task Force

The Elkins Family Law Task Force, chaired by Associate Justice Laurie D. Zelon of the Court of Appeal, Second Appellate District (Los Angeles), was appointed in May 2008 to conduct a comprehensive review of family law proceedings and recommend to the Judicial Council of California proposals that will increase access to justice, ensure due process, and provide for more effective and consistent rules, policies, and procedures.

The 38-member task force included appellate court justices, judges, court commissioners, private attorneys, legal aid attorneys, family law facilitators, self-help center attorneys, court executives, family court managers, family court child custody mediators, court administrators, and legislative staff. Members had extensive experience in all aspects of family law and represent courts and diverse cultural and economic communities from throughout the state.

In making these recommendations, the Elkins Family Law Task Force was committed to:

- Ensuring justice, fairness, and due process in family court;
- Ensuring meaningful access for all family court litigants;
- Using innovative techniques to promote effective and efficient practices in family court;
- Improving the status of, and respect for, family law litigants and the family law process; and
- Securing adequate resources for the family courts, including existing, reallocated, and new resources.

Guiding Principles of the Elkins Family Law Task Force

1. Courts will ensure consistent and timely access to equal justice for all individuals, families, and children in family law proceedings.

2. Statutes, rules, procedures, and practices will protect procedural fairness and the due process rights of parties as well as seek to increase efficiency, effectiveness, consistency, and understandability. Simplification must not diminish due process rights. Task force recommendations will be evaluated for their potential impact on due process, fairness, and effective and timely access.

3. Court services, procedures, and calendaring should address the needs of parties whether they are represented by attorneys or are self-represented. They should also be adapted to the complex and diverse needs of individuals, families, and children in court. In making its recommendations, the task force will be cognizant of the various challenges litigants may have in accessing the courts, including language barriers, cultural barriers, and disabilities.

4. The task force will identify the resources that courts require to handle increasingly complex and demanding family law caseloads. Investing in the modernization of family law courts will improve the quality of outcomes for Californians and enhance the priority given to and the status of family law proceedings.

5. The task force is aware of the unique opportunity to make far-reaching, positive changes in family law. The task force is mindful of the long-term impact of family law on individuals, families, children, and society.

6. The task force will develop its recommendations through an inclusive process that relies on consultation with interested stakeholders and the public, as well as coordination and collaboration with ongoing related projects and efforts to improve family law.

Message From the Chair

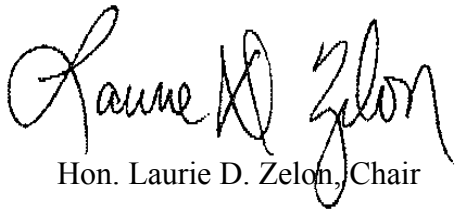
I am pleased to present this report from the Elkins Family Law Task Force. The report focuses on the task force's recommendations, which are the result of an unprecedented, two-year effort to review the structure and operation of California's family courts. The task force was asked to conduct a comprehensive review of family law proceedings and make recommendations to the Judicial Council of California that would increase access to justice for all family law litigants, ensure fairness and due process, and provide for more effective and consistent family law rules, policies, and procedures.

The *Elkins* case, for which this task force is named, is fundamentally about equal justice under the law. To ensure equal justice for all, we must provide meaningful access to the courts to everyone. Our recommendations promise to significantly improve California families' experience in the family court. Making the task force's recommendations a reality will involve an ongoing collaborative effort by local court leadership, the Judicial Council, the Legislature, attorneys, and all those who work in or use the courts. The work will not be easy, but the goal of ensuring meaningful access to the family court is crucial. This goal kept the members of this task force, with their often disparate viewpoints and interests, working respectfully together until they unanimously agreed on this set of recommendations.

I invite you to read this full report and to join us in taking the next steps toward making equal justice for all a reality in our family courts. The best measure of our task force's success will be if the implementation of these recommendations creates a family court that deserves and earns the trust and confidence of those California families who bring to it the sensitive and difficult issues they must resolve.

On behalf of the task force, I thank all the individuals and organizations who took their valuable time to provide us with their perspectives and suggestions. I also want to express my sincere appreciation and gratitude to each of the task force members for their invaluable contributions and extraordinary commitment to improving the lives of California's families. And I thank, too, our talented and dedicated staff whose tireless efforts informed our work at every step.

Finally, I thank the California Supreme Court for suggesting that our task force be created and Chief Justice Ronald M. George, Administrative Director of the Courts, William C. Vickrey, and the Judicial Council for giving us the extraordinary opportunity to present our road map to creating a twenty-first-century family court that can truly meet the needs of California's diverse families.



Hon. Laurie D. Zelon, Chair

Elkins Family Law Task Force Report

Executive Summary

We recommend to the Judicial Council that it establish a task force, including representatives of the family law bench and bar and the Judicial Council Advisory Committee on Family and Juvenile Law, to study and propose measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for litigants, many of whom are self-represented.

Elkins v. Superior Court (2007) 41 Cal.4th 1337, 1369 [163 P.3d 161]

The Elkins Family Law Task Force was established in May 2008 to conduct a comprehensive review of family law proceedings and to make recommendations to the Judicial Council of California that would increase access to justice for all family law litigants including self-represented litigants, ensure fairness and due process, and provide for more effective and consistent family law rules, policies, and procedures. The 38-member task force included appellate court justices, judges, court commissioners, private attorneys, legal aid attorneys, family law facilitators, self-help-center attorneys, court executives, family court managers, family court child custody mediators, court administrators, and legislative staff.

Background

Family law touches the most central aspects of Californian's lives: where, when, and how often a parent will see his or her child; their personal safety; how much child and spousal support one person will receive and the other will pay; and how the assets that the family has accumulated will be divided between the separating parties. These decisions can have dramatic and lasting impact on people's lives. The thousands of cases heard every week in California's family law courtrooms speak eloquently of the importance that families and the community place on the ability of the courts to resolve their disputes peacefully and with finality.

For many years, our family courts have attempted to make the most effective use of the resources available to them to meet the increasing needs of California's families. While the number of cases has steadily increased, the resources devoted to processing and hearing those cases have not. In 2005, each family judicial officer had an average caseload of over 2,500 new cases in addition to the unresolved cases that were filed in prior years. The community relies on the courts to provide adequate resources to meet this need, but many of our family courts lack those resources. Our report recommends ways in which resources can be allocated and developed, and procedures implemented, to assure California's families that their cases will receive the time and attention they deserve.

Recommendations

"We need a fresh look at family law from top to bottom. The system is broken. Let's fix it—and not with a band-aid."

Family Law Attorney

For two years the Elkins Family Law Task Force conducted a comprehensive review of California's family courts. We engaged in extensive outreach to family court stakeholders including judicial officers, court staff, private and public attorneys, and family law litigants and asked for views on the state of the family courts and their suggestions for improvements. The task force received thousands of comments through e-mail, letters, surveys, focus groups, and testimony at meetings and public hearings. The tremendous interest in our work reflects the important role that the family courts play in the lives of so many California families and the extent to which families' lives are affected by decisions made in family court every day.

The task force issued draft recommendations for public comment on October 1, 2009. After hearing from stakeholders for over two months, we finalized our recommendations and prepared them for presentation to the Judicial Council in April 2010.

The bottom line of the task force's work for the past two years was and remains a commitment to the principle that all California families deserve a family court that ensures consistent and timely access to equal justice. Within that framework, our recommendations were guided by a set of values and beliefs about what the family court should do, which included:

- Ensuring justice, fairness, and due process in family court;
- Ensuring meaningful access for all family court litigants;
- Using innovative techniques to promote effective and efficient practices in family court;
- Improving the status of, and respect for, family law litigants and the family law process; and
- Securing adequate resources for the family courts, including existing, reallocated, and new resources.

Recommendation Highlights

Our task force's recommendations fall under five broad categories:

I. Efficient and Effective Procedures to Help Ensure Justice, Fairness, Due Process, and Safety
II. More Effective Child Custody Procedures for a Better Court Experience for Families and Children
III. Ensuring Meaningful Access to Justice for All Litigants
IV. Enhancing the Status of, and Respect for, Family Law Litigants and the Family Law Process Through Judicial Leadership
V. Laying the Foundation for Future Innovation

Included within these categories are 21 main recommendations that cover different aspects of the family court. Within the 21 main recommendations are 117 specific recommendations. Each recommendation is important to the family court reform we envision. Following is a short summary of the main recommendations:

I. **Efficient and Effective Procedures to Help Ensure Justice, Fairness, Due Process and Safety.**

A. ***Helping People Navigate the Family Law Process Through Caseflow Management.*** The courts should adopt caseflow management procedures that allow them to establish a family-centered case resolution process tailored to meet the needs of each individual family. Parties who want to complete their family law cases would know the next steps they need to take to successfully move their cases to a timely resolution. Parties who wish to explore reconciliation, collaborative proceedings, or other methods of resolving their disputes will remain able to do so.

B. ***Preserving the Right to Present Live Testimony at Hearing.*** Parties should have the right to provide testimony on substantive issues to the judicial officer at hearings on motions and orders to show cause unless the judicial officer finds good cause not to permit live testimony.

C. ***Providing Clear Guidance Through Rules of Court.*** The family law rules should be revised to be more comprehensive and provide greater statewide uniformity in family law procedures. The rules should incorporate effective practices from local courts that lend themselves to statewide implementation. Local rules should neither address procedures covered by statute or the California Rules of Court, nor should they be inconsistent with statute or the California Rules of Court.

D. ***Streamlining Family Law Forms and Procedures***. All Judicial Council forms should be clear and easy to complete. The Judicial Council should review all family law forms and simplify them as much as possible. Forms should be translated into multiple languages. The

Judicial Council should review local court forms to determine which might be adapted for statewide use. Local forms should not be in conflict with statewide Judicial Council forms. Summary dissolution and other procedures for uncontested cases should be simplified.

E. ***Standardizing Default and Uncontested Process Statewide***. Many cases proceed by default. There should be efficient, uniform statewide procedures to process default and uncontested judgments to make it easier for litigants to obtain default judgments and to reduce the workload of court staff in processing them.

F. ***Scheduling Trials and Long-Cause Hearings***. Trials and long-cause hearings should be heard until completed without interruption by other trials.

G. ***Improving Domestic Violence Procedures***. Domestic violence procedures in the family court should permit the parties to obtain custody, visitation, and child support orders that remain in effect after the expiration of the protective orders. Procedures should permit parties who are not married to establish uncontested parentage orders without having to file a separate parentage action. Courts should have procedures in place for mediation and other services that allow court staff to meet with the parties separately in cases in which domestic violence has been alleged.

H. ***Assessing Mechanisms to Handle Perjury***. The Judicial Council should assess the adequacy of existing civil remedies for perjury.

II. More Effective Child Custody Procedures for a Better Court Experience for Families and Children

A. ***Improving Contested Child Custody Procedures***. Parents should be given a meaningful opportunity to respond to information that mediators, evaluators, and investigators provide to the court. Child custody mediation services should be adequately funded to give mediators enough time to mediate disputes. The roles of child custody evaluators and investigators should be better defined. Pilot projects should be established that would promote confidential mediation initially and would test the best ways to assist courts in getting the information they need about the families if parties fail to reach agreement.

B. ***Providing Guidance for Children's Participation and the Appointment of Minor's Counsel.*** Children's participation in contested marital dissolution proceedings present difficult issues for the court, parents, and the children. Determinations of whether and in what manner a child testifies should be decided on a case-by-case basis taking into account the need for the court to hear from the child in order to make an informed decision, the child's wishes, and the obligation of the court to protect children from any harm that may result from their participation. If the court appoints an attorney for the child, the court should clearly define the role of the minor's counsel and make sure that counsel acts within the scope of that role. Minor's counsel should not assume the role of an evaluator and make

recommendations, file a report, or testify. Courts must ensure that minor's counsel meet minimum requirements. Courts should monitor the bills that minor's counsel send to the parties and should cap fees as appropriate.

C. ***Enhancing Children's Safety***. Child Welfare Services should conduct initial investigations for all allegations of child abuse and neglect, whether or not one of the parents has filed an action in the family court. Pilot projects should be established to study the best way of handling cases involving allegations of child abuse.

III. Ensuring Meaningful Access to Justice for All Litigants

A. ***Increasing the Availability of Legal Representation and Providing a Continuum of Legal Services***. To meet the needs of family law litigants in as cost-effective a manner as possible, it is critical that a continuum of services be available, from providing legal information, assisting with forms and explaining legal processes, giving legal advice, and providing mediation or settlement assistance to representing a litigant on a portion of a case, providing full representation in the trial courts, and providing representation in appellate matters. Self-help services should be expanded to help people who can represent themselves, and legal services programs, including pro bono and limited representation panels, should be expanded to provide representation to those people who are unable to represent themselves. Courts should consider making early needs-based attorney fee orders rather than waiting until trial.

B. ***Improving Litigant Education***. Litigant education programs should be established to provide orientation to the family court and to services, such as self-help and child custody mediation, that the court makes available. These programs not only help court users obtain the relief they are seeking but also help court staff process their cases more efficiently.

C. ***Expanding Services to Assist Litigants in Resolving Their Cases.*** Courts should expand the availability of mediation and other settlement programs to issues other than child custody and visitation. Providing greater opportunities to settle cases helps parties resolve their own disputes and reduces acrimony and court time.

D. ***Providing Interpreters When Needed.*** Interpreters should be available in all family law matters involving litigants with limited English proficiency (LEP) and hearing impairments so that they can participate meaningfully in their hearings and trials, mediation, and other services in which litigants must participate.

E. ***Making Court Facilities More Responsive to the Needs of Family Court Users.*** In the future, courthouses should be designed to accommodate the needs of family law litigants by providing space for self-help assistance, settlement conferences, settlement assistance programs, and other services. Courts need to be responsive to the needs of people with disabilities.

IV. **Enhancing the Status of, and Respect for Family Law Litigants and the Family Law Process through Judicial Leadership**

A. ***Promoting Leadership, Accountability, and Better Use of Resources.*** Judicial leadership is needed to ensure that the family courts get sufficient resources, including a sufficient number of well qualified judicial officers to give California families the time and attention they deserve to resolve their family law disputes in a timely manner.

B. ***Improving Judicial Branch Education.*** Better education for family law judicial officers will help enhance the status of the family court. Having experienced judges who are well versed in family law and trained to work with parties under emotional and financial stress will engender greater respect from attorneys and litigants.

C. ***Increasing Public Information and Outreach.*** More public information and outreach will give Californians a better understanding of the critical issues that the family courts decide every day. The public needs to be educated on the role of the family court, the family court process, and the services that the family court provides to assist parties resolve their disputes as they separate.

V. **Laying the Foundation for Future Innovation**

A. ***Improving Family Court Through Empirical Research.*** Courts should collect basic information about family law cases to inform the deployment of resources in the family court. Courts should use existing workload studies to assess judicial and staff resource allocations to the family court. Workload study methodology should be reviewed and updated. When statistics are not available, targeted research projects can also provide the courts with critical information needed to allocate existing resources appropriately and effectively advocate for new resources. Empirical research will also allow courts to measure the effectiveness of new processes and services in providing better access to justice.

B. ***Creating the California Family Law Innovation Project***. The evolving nature of family law requires that the courts have a continuous process in place to find and evaluate effective and efficient practices in the family courts. The California Family Law Innovation Project should be established to encourage the development of and to fund innovative pilot programs in the local courts that would be tested, evaluated, and adapted for statewide use if appropriate.

Conclusion

The goal of the Elkins Task Force was to develop a blueprint for fundamental change in the family law system. Some of its recommendations can be implemented quickly; others may require changes in legislation and court rules. Still others may require new funding, some of it substantial. While the task force was, and is, mindful of the unprecedented fiscal challenges California faces today, we believe that implementing these recommendations will significantly

improve access to justice for those families who must come to court to resolve their disputes. This is an ongoing process, as our call for continuing study of potential innovation demonstrates. The current situation is the result of years of development; solving it requires an effort that must begin now but will necessarily continue on into the future.

While current budget restraints may delay adding new resources, all of our recommendations should nonetheless be prepared for implementation. Each recommendation is important, and, to ensure access to justice and fairness to California's families, all should be put into place as soon as resources can be secured. Improving the family court must be a priority to restore and maintain the public's trust and confidence in the courts.